

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 23, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:16KD-013

Kauai

Request for Grant of Term, Non-Exclusive Easement to Edmund D. Gregoire and Linda L. Gregoire for Seawall Purposes, Assess Administrative Cost of \$500.00; por. of Kukuiula Subdivision, Kukuiula, Koloa, Kona, Kauai, Tax Map Key: (4) 2-6-011:019.

APPLICANTS:

Edmund D. Gregoire and Linda L. Gregoire.

LEGAL REFERENCE:

Section 171-6, 13, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kukuiula Beach Lots, por. of Kukuiula, Koloa, Kauai, identified by Tax Map Key: (4) 2-6-011:019 shown on the attached map labeled Exhibit A.

AREA:

106 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Conservation
County of Kauai CZO:	Residential [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, item 46. See exemption declaration attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment; and
- 2) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The Gregoires acquired the property in December, 2014. After starting renovations to the property, the applicants learned that the seaward edge of the seawall is located makai of the shoreline.

A new shoreline survey was completed which locates the shoreline along the seaward edge of the seawall and which jogs inland at the location of the concrete steps. This encroachment is approximately 106 square feet. See Exhibit C.

The Office of Conservation and Coastal Lands require that the applicants obtain an easement before applying for a shoreline certification.

Land Division considers the portions of seawall makai of the proposed shoreline to be located on unencumbered land, owned by the State, notwithstanding that the subject structure once was within the recorded boundary of the parcel on private land. Therefore, the portions of the seawall located makai of the shoreline are now considered encroachments on State unencumbered land. The applicants want to resolve the encroachment and request the Board authorize the issuance of a term, non-exclusive easement. A disposition is required to resolve the encroachment on State land.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No comments received by suspense date
DLNR – Historic Preserv.	No historic properties affected
DLNR – OCCL	Supports easement request
OHA	No comments received by suspense date

County Agencies:

County Planning	No comments received by suspense date
Public Works	No objections

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fines for the subject encroachment based on the fact that it was once within the recorded boundary of the private property. However, staff recommends the Board assess the administrative cost of \$500 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

Staff does not recommend imposing a fine, pursuant to Section 171-6(12) of the Hawaii Revised Statutes, for the seawall encroachment constructed without prior consent by the State.

RECOMMENDATION: That the Board:

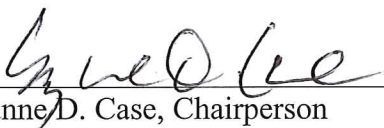
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Access non-refundable administrative cost of \$500.00, under Section 171-6, HRS.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Edmund D. Gregoire and Linda L. Gregoire covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 2-6-011:019, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:



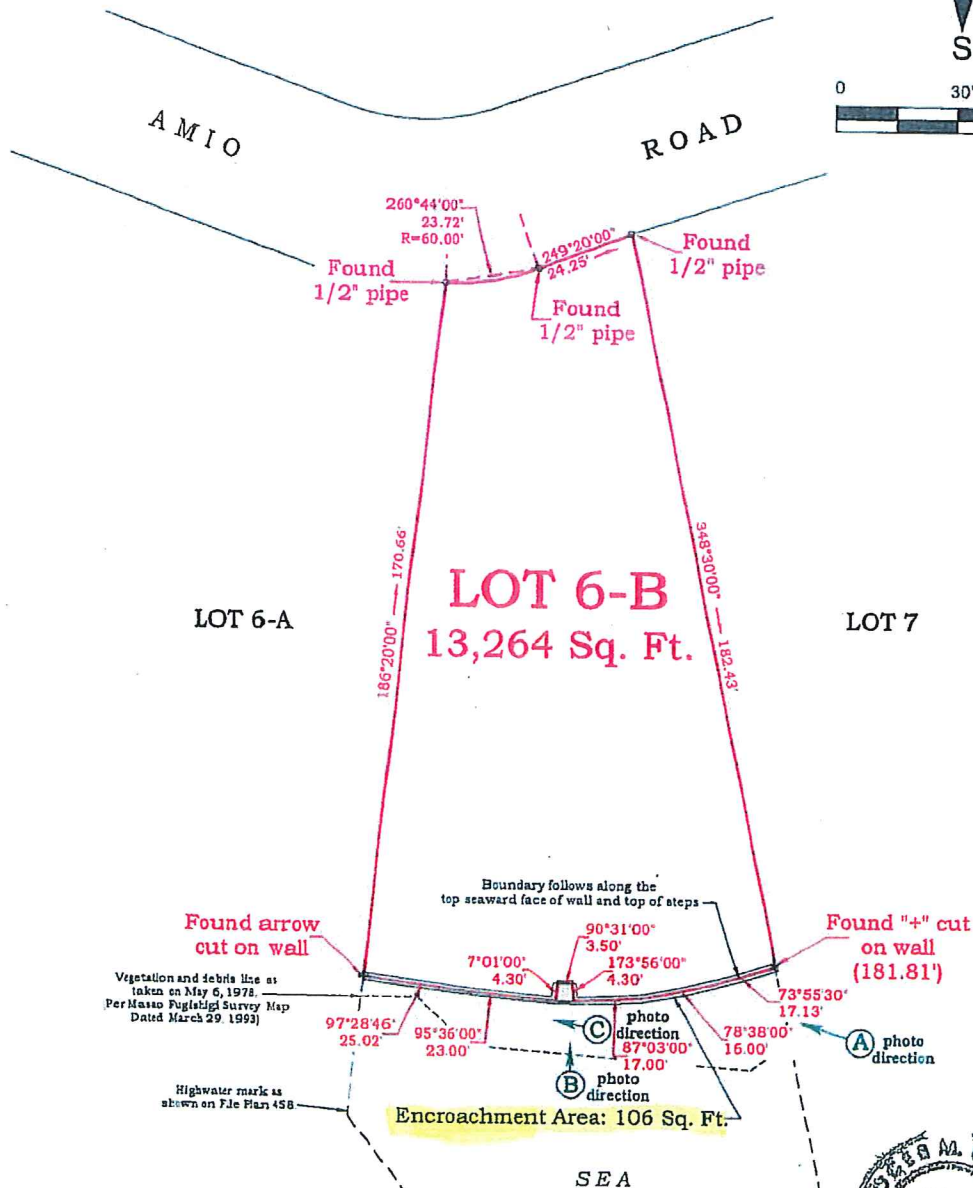
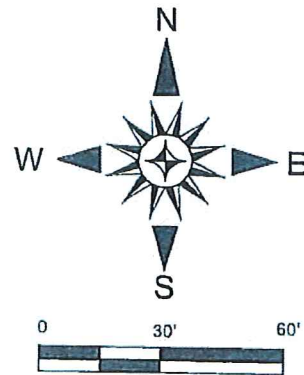
Suzanne D. Case, Chairperson

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC	PLAT
2	6	11
CONTAINING PARCELS		
SCALE: 1 IN. 50 FT.		

EXHIBIT "A"

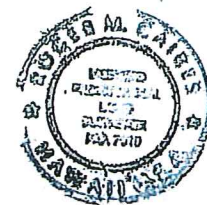
Notes:

1. Only the improvements on this map have been field located.
2. Map is based on monuments as shown on map.
3. Underground utilities, septic tanks, etc. were not field located except as noted.
4. The actual location, existence, size, depth, condition or capacity of any drainage systems, sub-surface water system, cesspool/septic tank system, sewer line and utility lines to the property is not part of this map. The appropriate governmental and/or utility agencies should be contacted for this information.



SHORELINE MAP
SHOWING
LOT 6-B

4650 Amio Road
Kukui'ula Subdivision
Being a portion of Royal Patent 6714,
Land Commission Award 7714-B, Apana 2,
to Mose Kekuaiwa no M. Kekuanaoa
Kukui'ula, Kōloa, Kaua'i, Hawai'i
Tax Map Key (4) 2-6-011: 019
Date of Field Survey: October 22, 2015



THIS MAP WAS PREPARED BY ME
OR UNDER MY SUPERVISION
Roger M. Cairns
ROGER M. CAIRNS
Licensed Professional Land Surveyor
Certificate Number 7919 Expires 04/30/16
CLS-HAWAII
Land Surveying & Mapping
P.O. Box 777
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DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
KEKOA KALUHIWA
FIRST DEPUTY
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR, WATER
AGRICULTURE RESOURCES
BOATING AND RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
COMMISSION ON WATER AND COASTAL LANDS
CONSERVATION AND RECREATION LANDS
ENGINEERING
FORESTRY AND WILDLIFE
HAWAIIAN PRESERVATION
KAIHUAWEI AND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for Grant of Term, Non-Exclusive Easement to Edmund D. Gregoire and Linda L. Gregoire for Seawall Purposes

Project Number: PSF No. 16KD-013

Project Location: por. of Kukuiula, Koloa, Kauai, Tax Map Key: (4) 2-6-011: seaward of 019.

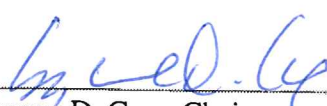
Project Description: Easement for the legal encroachment on State lands.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 which states "Creation or termination of easement, covenants, or other rights in structures or land".

Consulted Parties: Agencies as noted in the submittal.

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne D. Case, Chairperson


2/8/16
Date

EXHIBIT "B"